

# Legal Fact Sheet

## Virginia Food Donation: Food Scraps for Animals

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Societies have incorporated food scraps into animal feed for centuries.<sup>i</sup> This practice declined in the 1980s, when state and federal laws tried to limit the feeding of food scraps to animals following several disease outbreaks linked to animal products in livestock feed. Many laws refer to the practice of feeding leftovers to animals as “garbage feeding,” but today many groups use the terms “food scraps” or “food residuals,” which have less negative connotations.<sup>ii</sup>

Recently, there has been renewed interest in the practice of feeding safe, properly treated food scraps to animals. Using food scraps as animal feed in a safe, resource-efficient way can be an environmentally friendly and energy-efficient alternative to exclusively feeding livestock crops grown for that purpose. Repurposing otherwise wasted food has multiple benefits for regional farmers and food scrap generators, such as retailers, restaurants, and educational institutions. These entities can partner to enhance the sustainability of their operations and reduce feed and disposal costs. Incorporating food scraps into animal feed can also reduce the demand for commercial feeds and the land, water, and other resources needed to produce them. Federal and Virginia state laws regulate the use of food scraps in animal feed. This guide will examine both types of law.

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### Federal Laws on Feeding Food Scraps to Animals

The federal government regulates the use of food scraps in animal feed by limiting the type of animals that may be fed food scraps and the kind of food scraps that may be fed to animals. The federal regulations function as a floor that allows state regulations to go beyond them. The American Association of Feed Control Officials (AAFCO) is the appropriate regulatory body. Relevant federal laws include:

- **The Federal Swine Health Protection Act (SHPA)**<sup>iii</sup> mandates that, before being fed to swine, food scraps—called “garbage” in the law—containing meat and animal byproducts must be heat-treated (212 degrees Fahrenheit/100 degrees Celsius at sea level) for at least 30 minutes by a licensed facility.<sup>iv</sup> Food scraps containing only certain processed items—including industrially processed and rendered animal products, bakery waste, candy, eggs, domestic dairy products, and certain types of fish—need not be heat-treated.<sup>v</sup> SHPA requires feeders to keep swine away from untreated food scraps, and to keep treated food separate from untreated food.<sup>vi</sup> But SHPA does not prevent a household from feeding kitchen scraps to its own pigs on the same premises where the household is located, including those scraps containing untreated meat.<sup>vii</sup>

- **Transmissible Spongiform Encephalopathy (TSE)/Ruminant Feed Ban Rule**<sup>viii</sup> prohibits the feeding of any protein-containing portion of mammalian animals to ruminants in order to prevent TSE (such as Mad Cow Disease).<sup>ix</sup> Ruminants are animals that have a stomach with four chambers, such as cattle, sheep, and goats.<sup>x</sup>
- **The Preventive Controls Rule for Animal Food in the Food Safety Modernization Act (FSMA)**<sup>xi</sup> regulates animal feed that consists of human food byproducts,<sup>xii</sup> which are foods fit for animal but not human consumption, such as culls, peels, trimmings, and pulp from vegetable manufacturing or processing.<sup>xiii</sup> As some of these foods will overlap with the SHPA, compliance with both is required. In general, facilities processing food that will be fed to animals must (1) establish current good manufacturing practices (CGMPs), (2) develop and implement Hazard Analysis and Risk-based Preventive Controls (HARPC), and, if the facility receives food from a supply chain, (3) coordinate with other entities in the chain to control identified hazards.<sup>xiv</sup> But not all facilities must comply with all three requirements. Some facilities are completely exempt from the rule, including certain farms and other facilities that are not required to register with the Food and Drug Administration (FDA).<sup>xv</sup> Other facilities, such as those in compliance with the Preventive Controls rule for human food, are subject to modified requirements.<sup>xvi</sup>
- **The Food, Drug, & Cosmetic Act (FDCA)**<sup>xvii</sup> requires that animal feed,<sup>xviii</sup> like human food, be safe to eat, produced under sanitary conditions, and be free of harmful substances.<sup>xix</sup> Animal feed labels cannot be false or misleading in any way and they must comply with product-specific requirements.<sup>xx</sup> In general, an animal feed label must include the common name of the animal feed<sup>xxi</sup> and the name and place of the feed manufacturer, packer, or distributor.<sup>xxii</sup>

**Example Scenario:** *I own a small microbrewery. What practices should I follow when distributing byproducts from my business as animal feed?*

*Breweries produce spent grain, brewery mash, fruit or vegetable peels, and liquid whey as byproducts. They commonly distribute these scraps as animal feed. Because the grains, mashes, and fruit byproducts are not derived from meat or animal products, they do not fall under the SHPA or the Ruminant Feed Ban Rule. Liquid whey is regulated under SHPA as a domestic dairy product but the SHPA exempts domestic dairy from heat-treating and licensing requirements. Under the Preventive Controls rule, brewers must (1) comply with the human food processing CGMPs, (2) implement Hazard Analysis and Risk-based Preventive Controls, and (3) follow those specified CGMPs for preventing physical and chemical contamination when holding and distributing brewing byproducts, including refraining from further processing the brewery byproducts.<sup>xxiii</sup>*

## Virginia Law on Feeding Food Scraps to Animals

Virginia law does not allow food scraps that are defined as “garbage” to be fed to swine unless they are heat treated.<sup>xxiv</sup> Garbage is defined as “animal and vegetable wastes resulting from the handling, preparation, cooking, and consumption of foods containing animal carcasses or parts thereof.”<sup>xxv</sup> Accordingly, vegetable, bakery, or other food scraps not associated with animal carcasses do not fall within the definition of garbage and may be fed without restriction.<sup>xxvi</sup> However, if these food scraps contain animal carcasses or parts thereof, they may not be fed to pigs, unless heat treated.<sup>xxvii</sup> Heat treatment of food scraps requires the resultant product to be “of a uniform consistency” and to not exceed 10% moisture.<sup>xxviii</sup>

Anyone who manufactures commercial animal feed from food scraps must obtain an annual license from the Commission of Agriculture and Consumer Services.<sup>xxix</sup> The definition of commercial feed does not include the following commodities, so long as they are unadulterated<sup>xxx</sup> and not mixed with other materials: “unmixed whole seeds, raw meat, raw goats' milk, at the farm only; hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances.”<sup>xxxi</sup>


Farmers and animal feed producers must follow all applicable federal laws, even if no Virginia state law applies to their practices.

### Preventing Liability

Donating food to feed animals is not specifically covered under the federal Bill Emerson Good Samaritan Act. Thus, businesses that donate food to feed animals are not protected from liability under federal law. Similarly, Virginia has no laws that provide specific liability protection for donating food scraps to feed animals.

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### Conclusion



Feeding food scraps to animals has many economic and environmental benefits when done responsibly and in conformity with state and federal law. Federal and Virginia state law both allow feeding food scraps to animals. Individuals or businesses interested in applicable commercial animal feed laws and regulations can learn more by consulting the Virginia Department of Agriculture & Consumer Services and the Office of Plant Industry Service.<sup>xxxii</sup>

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<sup>i</sup> See Tristram Stuart, *Waste: Uncovering the Global Food Scandal* 243–44 (First American Edition 2009).

<sup>ii</sup> Food residuals refer to food disposals (including plate waste and food preparation disposals), as well as foods containing certain processed items, including processed and rendered animal products, human food byproducts, which are defined as foods fit for animal but not human consumption, and waste from the brewing and distillation industries such as brewer's grains or distillery byproducts.

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- iii 7 U.S.C. § 3801 et seq.; 9 C.F.R. § pt. 166.  
iv 7 U.S.C. § 3803(b); 9 C.F.R. §§ 166.2, 166.7.  
v 9 C.F.R. §§ 166.1, 166.2.  
vi *See e.g.*, 9 C.F.R. §§ 166.3(a), 166.4(a).  
vii 9 C.F.R. §§ 166.1, 166.2.  
viii 21 C.F.R. §§ 589.1, 589.2000.  
ix 21 C.F.R. § 589.2000.  
x 21 C.F.R. § 589.2000.  
xi 21 C.F.R. § 507.  
xii 21 C.F.R. § 507.12(a).  
xiii 21 C.F.R. § 507.  
xiv 21 C.F.R. § 507, Subparts B, C, E.  
xv *See* 21 C.F.R. §§ 117.3, 117.5, 507.3, 507.5(d).  
xvi 21 C.F.R. § 507.12.  
xvii 21 U.S.C. § 301, et seq.  
xviii 21 U.S.C. § 321(w).  
xix 21 U.S.C. § 342(a)(1).  
xx 21 U.S.C. § 343.  
xxi 21 C.F.R. § 501.3(b)(2).  
xxii 21 C.F.R. § 501.5.  
xxiii 21 C.F.R. § 507.12.  
xxiv Va. Code Ann. § 3.2-6032.  
xxv Va. Code Ann. § 3.2-6031.  
xxvi Va. Code Ann. § 3.2-6031.  
xxvii Va. Code Ann. § 3.2-6032.  
xxviii Va. Code Ann. § 3.2-6031.  
xxix Va. Code Ann. § 3.2-4803.  
xxx Va. Code Ann. § 3.2.4808 (defining adulteration to include, among other things, foods that contain added poisonous, dangerous, unsafe, or nonnutritive substances).  
xxxi Va. Code Ann. § 3.2-4800.  
xxxii VIRGINIA DEPT. OF AGRICULTURE & CONSUMER SERVICES, AGRICULTURAL COMMODITY PROGRAMS,  
<https://www.vdacs.virginia.gov/plant-industry-services-agricultural-commodity-inspection.shtml>.